IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.237 OF 2007

Nagnath Yamaji Zaveri
(since deceased through his heir)
Smt.Sundarabai N. Zaveri & Ors. ...Applicants

vs.

Shankar Lala Bulbule ...Respondent

Mr.A.P.Kulkarni for the Applicants
Mr.Nitin Mulye i/b Mr.G.S.Godbole for the Respondent.

CORAM: A.S.OKA,J.
DATE : JUNE 21, 2007.

P.C.:

1. Rule. The learned Advocate for the Respondent waives service. Considering the facts and circumstances of the case, taken up for hearing at the admission stage.

2. The Revision Applicants have taken exception to the Judgment and Order dated 12th September 2006 passed by the learned III Ad hoc Additional District Judge, Solapur. The respondent landlord filed a suit for possession of the rented premises against the Revision Applicants. Decree was passed by the Trial Court in the said suit on the ground of bonafide and personal requirement. In the Appeal, the said decree has been confirmed.

3. The submission of the learned Advocate for the Applicants is that perusal of the Judgment of the Appellate Court shows that the evidence on record regarding the ground of bonafide requirement has not been considered and there are no specific

findings recorded. His submission is that even the Appellate Court found that the Respondent is in possession of his own shop as well as another shop which is owned by him along with his three brothers. He submitted that there is no discussion as regards the area of the shop premises available to the respondent. He submitted that the findings recorded by the Appellate court are very cryptic.

4. When a prima facie view was expressed by this Court that the Appellate court has not dealt with the evidence in a satisfactory manner considering the fact that the Appellate Court is a final court of facts, the learned Advocate for the Respondent on instructions of the Respondent suggested that instead of keeping this revision Application pending in this court for final hearing, the Appellate Court may be directed to hear and decide the Appeal afresh.

5. The suggestion made by the learned Advocate for the Respondent is reasonable. The Appellate Court is a final court of facts. The impugned Judgment does not show that the Appellate court has considered and appreciated the evidence led by the parties on the ground of bonafide requirement. After referring to the description of the premises available with the Respondent and his brothers, a cryptic finding has been recorded by the Appellate Court that the Respondent has established his bonafide requirement. Therefore, a case is made out for passing an order of remand.

6. Hence, I pass the following order :

i) Impugned Judgment and Order dated 12th September 2006 is quashed and set aside and the Civil Appeal No.246 of 2004 is restored to the file of the Appellate Court.

ii) Parties are directed to appear before the learned Principal District Judge at Solapur on 31st July 2007 at 11.00 a.m. for fixing the schedule of hearing.

iii) The learned Principal District Judge may himself hear the Appeal or may assign the same to any other Judge considering his administrative convenience.

iv) The Appeal shall be heard and decided as expeditiously as possible and preferably on or before 31st December 2007.

v) Till the disposal of the Appeal, decree for possession shall not be executed subject to the condition that the Revision Applicants shall not create any third party interests in respect of the suit premises and shall not part with possession thereof in favour of any third party.

vi) All contentions of the parties in the pending Appeal are expressly kept open.

vii) Revision Application is partly allowed in above terms.

JUDGE